

The judgment of the Court of Appeal was given by :—

Murray-Aynsley, C. J. :—The appellants in this case were charged with the murder of a woman named Salmi on 17th February 1946. The evidence of the two principal witnesses was to the effect that several persons, amongst whom were the three accused, set upon this woman, as a gang, one of whom stabbed her, and then dragged her to the river and threw her in. One witness says that he then pulled her out of the river after which the assailants dragged her towards the sea.

The woman's body was found on the 21st February and was seen by the Medical Officer on that day whilst it was still floating in the sea near the shore. The exact cause of death could not be ascertained, but the condition of the body was compatible with death from shock and haemorrhage accelerated by asphyxia.

In the course of the trial the following statements were deposed to by a police Inspector, Raja Abas :—

"Accused No. 2 took me to the sea and there pointed out a place where the body of the deceased was thrown.....".

"Later I went out by boat to sea. Again he showed me spot where body had been thrown, this is about 1½ miles from the bridge".

"He said it had been dragged there by boat with a rope tied round its neck".

For reasons which will be explained later we are of opinion that none of these statements alleged to have been made by accused No. 2 was admissible in evidence.

The witness Raja Abas went on to say :—

"On the 21st February the body was found. I was certain it was Salmi's body as I saw a rope round the neck as No. 2 had described."

It was claimed by the prosecution that it was as a result of the statements made by accused that the body was found; and also that it was because of accused's statement that the Police Inspector was able to identify the body by the rope round the neck. It is to be observed, however, that there is no evidence on the record to suggest that the body was found at the place which was pointed out by the 2nd accused—indeed there was no evidence at all as to where the body was found or by whom. Moreover the body was identified by both the 2nd and 4th prosecution witnesses without reference to the rope round the neck.

In view of the definition of "confession" contained in sub-section (2) of section 17 of the Evidence Enactment there can be no doubt in our view that all the statements of accused No. 2 above referred to come under the ban imposed by section 26 of the same Enactment, and are excluded by section 113 of the Criminal Procedure Code unless they can be brought within the scope of section 27 of the Evidence Enactment. But in our view nothing was deposed to as having been discovered as a result of what the 2nd accused said so that section 27 has no application to the matter before us.

We think it desirable to emphasise that the first step which must be taken before section 27 can be invoked at all must be proof of some fact discovered as a result of the information given by the accused. The following passage from the judgment of the Chief Justice in *Sukhan v. The Crown*⁽¹⁾ indicates this quite clearly :—

When the prosecutor has after satisfying the Court about its relevancy, deposed to the fact discovered by him, he has laid the foundation for proving the information received by him from the accused.

The evidence in this case and in the case of *Ganu Chandra v. Emperor*⁽²⁾ have recently been approved by the Privy Council in *Pulukuri Kotayya v. King Emperor*⁽³⁾.

It is clear, therefore, that in this case evidence has been admitted which should not have been admitted. Moreover this inadmissible evidence was specifically referred to in the summing-up of the learned Judge as evidence of importance. We find it impossible to suppose that the Assessors may not have been influenced in their decision in respect of all the accused by these wrongly admitted statements, and we are therefore of opinion that the convictions cannot stand.

All the convictions are accordingly quashed and the appeal of each of the appellants is allowed.

Appeal Allowed.

SUNG SONG LING v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Laville, J.) December 4, 1947]

Johore Trade and Customs Enactment (No. 80), S. 39—Preparation of an incorrect Customs Declaration—Whether this is conclusive evidence of intention to use it for an improper purpose.

In this case the facts were shortly as follows:—The accused presented at the Customs Office in Johore Bahru a declaration of goods to be imported to the value of \$409.50 together with nine packages of goods. These and the invoices to cover the goods were detained for clearing the next day. The accused also stated that the declaration was not correct as one box had been omitted and that he would hand in another declaration the next day. The next morning the Senior Customs Officer

checked the goods and found that there were many more than had been entered in the declaration and that the values in the declaration were all less than those given by the invoices. At 8.45 a.m. that morning, accused appeared at the Customs Office with a fresh declaration giving correct values for all the goods detained. He was subsequently charged with being knowingly concerned in an attempt to evade customs duty and was convicted. He appealed.

Held, that the preparation of an incorrect Customs declaration is not conclusive evidence of an intention to use it for an improper purpose, and that, if there is a reasonable explanation of all the circumstances, such explanation must be accepted.

CRIMINAL APPEAL.

R. C. H. Lim for the Appellant.

W. M. McCall (Crown Counsel) for the Respondent.

Laville, J. : — In this case accused is charged with being knowingly concerned in an attempt to evade customs duty on certain medicines he wished to import at or about 6.45 p.m. on 24-7-1947.

There is no dispute about the facts. It is common ground that accused presented at the Customs Office in Johore Bahru a declaration of goods to be imported to the value of \$409.50, together with 9 packages of goods, and that these and the invoices to cover the goods were detained for clearing next day, and that at or about the same time he gave the value of the goods at about \$300 — the declaration actually adds up to \$309.50 and not \$409.50 — and stated that the declaration was not correct as one box had been omitted, and that he would hand in another declaration the next day. The suspicions of P.O.D.O. 583 were aroused and the Senior Customs Officer, J.B., was advised by telephone.

The next morning the S.C.O. checked the goods and found there were many more than had been entered in the declaration and that the values in the declaration were all less than those given by the invoices. At 8.45 a.m. that morning, accused appeared at the Customs Office with a fresh declaration giving correct values for all the goods detained.

The question for decision is whether the lodging of the first declaration amounted to a conscious attempt to evade the full duty on such articles as had been declared therein, and all the duty on such articles as had been omitted from the declaration.

It is conceded by the Prosecution that duty on trade goods cannot be paid after 3 p.m. on any day; that goods brought over after that time are detained for examination and payment of duty next day, and that if goods are deposited overnight, i.e. after 3 p.m. on any day, a declaration must be lodged with them.

It was elicited at the hearing in this Court that the normal procedure followed by importers is to halt at the Singapore Customs gate at Woodlands and there prepare a declaration form for entry into Johore on a Johore Customs form: the reason for this is to satisfy the Singapore Customs that no goods liable to export duty from Singapore are taken over without paying that duty. The declaration form therefore is meant to serve a double purpose.

The evidence of O.D.O. 330, who first dealt with accused in Johore, is that accused came to the office about 6 p.m. and said he wished to pay duty on medicines, gave the value at about \$300, was told the duty would have to be paid next morning, and on request handed over the declaration form on which this charge is based.

At the same time he informed the O.D.O. that the declaration was not correct as one box had not been mentioned.

At this point P.O.D.O. 853 came in and said he suspected the accused was trying to evade duty, inspected the declaration form which, he says, showed the value at \$300/—, though on the face of it it should be \$409.50, and requested accused to hand him the invoices which accused did; when asked if the goods declared matched the invoices, accused at once said No.

O.D.O. 330 agrees that after accused had said the declaration was not correct he said he would bring a full declaration next morning.

P.O.D.O. 853 said accused asked for return of the declaration and the invoices: this was after he had admitted that the declaration did not cover the invoices and he says that accused was quite frank about all he said.

On the morning of 25-7-47 accused made a statement to the S.C.O. in which he states that he told the O.D.O. he would pay duty next morning and deposit the goods with the Customs, and that he had often done this before. He stated that as it was late he had only made a rough declaration at Woodlands with the intention of producing a proper one next morning and that he told the O.D.O. that his declaration was not correct, and was made without reference to the invoices which he had, as he was in a hurry.

It seems clear that accused had often previously imported similar goods and deposited them and paid duty next day; that it was always necessary before deposit to deposit a declaration with the goods, that the declaration form served a double purpose, i.e. to clear the goods at Woodlands and enable them to be deposited in Johore.

It is clear from the prosecution evidence that accused, when the goods were deposited, volunteered to O.D.O. 330 the information that the declaration was not correct and he would hand in a correct declaration next morning. This was before P.O.D.O. 853 took a hand in the proceedings.

It is admitted that accused was quite frank about the declaration, that it was impossible to pay duty that night and that it would be the height of folly to make a false declaration when he knew the goods would be examined next day.

In my view there is a reasonable ground to suppose that the declaration in question was made primarily to clear the goods from Singapore and enable them to be deposited in Johore pending payment of duty: there is prosecution evidence that accused volunteered the information on entry and before any suspicion arose that the declaration was not correct, and this, if accepted, at once dissipates any idea of evasion of customs duty as it puts the Customs at once on enquiry.

The preparation of a false declaration is not conclusive evidence of an intention to use it for an improper purpose, and, if there is a reasonable explanation of all the circumstances, such explanation must be accepted.

For these reasons I am of opinion that there is a reasonable doubt as to intention of the accused to evade payment of full or part duty on the goods and that he should be given the benefit of the doubt.

The appeal is allowed and conviction and sentence quashed. The goods will be returned to appellant after the proper duty as assessable on 25-7-47 is paid.

Appeal Allowed.

CHENG KEE HUAT AND ANOR. v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Russell, J.) December 13, 1947]

Opium and Chandu Proclamation Ss. 3, 7 and 17—Forfeiture of property of completely innocent person—Sentence on a subsidiary charge should be concurrent with sentence on main charge.

In this case the first appellant was the owner of the motor car in which opium was found and the second appellant was the driver. The opium was found concealed in a box which had been screwed to the underpart of the chassis. Both the appellants were originally charged (a) with importing chandu into the Malay Peninsula contrary to S. 7 of the Opium and Chandu Proclamation and (b) with having in their possession in the car opium contrary to S. 3 of the Proclamation. The first appellant was acquitted on both charges but he appealed against the order of the District Judge forfeiting the motor car to the Customs. The second appellant pleaded guilty and was sentenced to three years r.i. on the first charge and 9 months r.i. on the second charge, the sentences to run consecutively. He appealed against the severity of the sentence.

Held, (1) that where a motor car the property of a completely innocent person is being used in connection with an offence of which no knowledge can be attributed to such person, then an order should not be made under S. 17 of the Opium and Chandu Proclamation confiscating such motor car; (2) that where an accused is sentenced on a main charge and on a subsidiary charge the sentences should be made concurrent.

CRIMINAL APPEAL.

Hastings for the Appellant.

C. H. Whitton (Crown Counsel) for the Respondent.

Russell, J. :—In this appeal the first and second appellants were charged firstly, with importing opium into the Malay Peninsula contrary to section 7 of the Opium and Chandu Proclamation and, secondly, with having in their possession in car S.7165 opium contrary to section 3 of the same Proclamation.

The first appellant was acquitted and discharged on both charges but appeals against the order of the learned District Judge forfeiting the above-mentioned motor-car to the Customs. The first appellant was the owner of the motor-car and the second appellant was his driver and the opium was found concealed in a box which had been screwed to the under part of the chassis. It was not disputed that the learned District Judge had a discretion to order the forfeiture of the car under section 17 of the Proclamation as it had been used in connection with an offence under the Proclamation but I do not think he exercised his discretion in a judicial manner. His reasons for doing so appear to have been two, firstly, that he considered that the first appellant had failed in his duty as a citizen to prevent the importation of this drug into the open market and, secondly, that its confiscation would act as a deterrent.

The first appellant was found to be completely innocent on both charges and no knowledge that his car was being used in connection with an offence concerning opium can be attributed to him. I do not see in what way he failed in any duty nor do I consider that the forfeiture of the property of a completely innocent person can act as a deterrent to wrong-doers. I therefore ordered the order of forfeiture to be quashed.

The second appellant pleaded guilty to both charges and appealed only as to sentence. The sentence of three years was not to my mind excessive considering all the circumstances of the case but the sentence of nine months was imposed upon a subsidiary charge to the main one and for that reason I ordered it to run concurrently with the sentence of three years which was imposed on the main charge and not consecutively as ordered by the learned District Judge.

Order Accordingly.